IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29 .01.2007

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.433 of 2001

S.Rajendra Rao ... Appellant (Petitioner/Claimant)

vs.

1. G.Vanaja
2. The Oriental Insurance Co. Ltd.,
   Subba Govindam II Floor,
   Imperial Road, Cuddalore,
   Cuddalore District. ... Respondents (Respondents)

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the Judgment and decree, dated 02.12.1999 made in M.A.C.T.O.P.No.837 of 1997 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Dharmapuri District at Krishnagiri.

For Appellant : Mr.P.Mani
For 2nd Respondent : Mr.Varadhakamaraj for Mr.S.Manohar

J U D G M E N T

Not satisfied with award dated 02.12.1999 made in M.A.C.T.O.P.No.837 of 1997 on the file of the Motor Accidents Claims Tribunal, (Principal District Judge), Dharmapuri District at Krishnagiri, the claimant has preferred this appeal.

2. Brief facts leading to this appeal are as follows: On 20.10.1995 at about 11.00 a.m., when the appellant was proceeding towards Krishnagiri in a lorry bearing registration No.TCG 3400, another lorry bearing Registration No.TN-31-1921, owned by the first respondent, came in a rash and negligent manner, dashed against his lorry and caused heavy damages to the lorry. The lorry owned by the first respondent is insured with the second respondent, the Oriental Insurance Company Limited. The appellant claimed compensation of Rs.1,00,000/- as damage to the property.

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4. The Second respondent-Insurance company resisted the claim, contending inter alia that the accident did not occur in the manner as set out in the claim petition. They disputed the driving licence of the appellant.

5. Before the Tribunal, the appellant examined himself as P.W.1. P.W.2 is the driver of his vehicle. Ex.P1 - First Information Report dated 20.10.1995, Ex.P2 – Motor Vehicles Inspection Report; Ex.P3 – Copy of the Policy and Ex.P4 - Bills were marked on the side of the appellant. On behalf of the respondents, The Surveyor, who assessed the damage to the vehicle, was examined as RW.1 and Ex.B1 – Judgment copy in O.S.No.5 of 1998 and Ex.B2 – Motor Vehicles Inspection Final Report dated 16.01.1996 were marked.

6. On consideration of oral and documentary evidence, the Tribunal found that the driver of the first respondent was responsible for the accident and awarded compensation of Rs.25,955/- with interest at the rate of 12% per annum.

7. Heard Mr.P.Mani, learned counsel appearing for the appellant and Mr.Varadhakamaraj for Mr.S.Manohar, learned counsel appearing for the second respondent.

8. Learned counsel for the appellant submitted that the Tribunal ought to have accepted the evidence of Pws.1 and 2 and Exs.P1 to P4 and awarded suitable compensation. He further submitted that the Tribunal has erred in relying upon the evidence of RW.1, Surveyor and Ex.B2, his report, in awarding compensation.

9. Per contra, learned counsel for the Insurance Company submitted that the vehicle was registered in the year 1986 and that the valuation was properly done by RW.1, Surveyor. He further submitted that all the defects pointed out in Ex.B2, Surveyor's report and vouchers submitted by the owner of the vehicle have been properly considered by the Tribunal. The award is just and reasonable compensation and does not warrant interference.

10. PW.1 has deposed that the vehicle's mirror, bumper, main axle, spring plate, side body have been damaged. In Ex.P3, Motor Vehicles Inspection report, following parts were noted as unfit for ordinary use.

> "Front Cabin, windscreen glass (2), side glass, side door, radiator, one set bumper, front main axle, damaged chassis to be checked for bent, steering (sic) box damaged, Dash board, bonnet, Diesel tank damage."

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The appellant also produced Ex.P4, bills and vouchers in support of his contention that he had incurred considerable expenses for the purchase of spare parts. But the appellant has not produced the damage parts of the vehicle before the Court.

11. Ex.B2, dated 16.01.1996 is the final report issued by RW.1, Surveyor appointed by the Insurance Company. In Annexure 2 of the report, he has given a brief description about the damages caused to the vehicle. It is clearly mentioned in the report that there was damage to cabin, rear body, chassis assembly, cooling system, main axle assembly, steering box assembly and suspension assembly. The surveyor also included the labour charges for the mechanic, value of the parts and allowed costs after depreciation. He assessed the damages to the vehicle at Rs.28,324/- and after deducting the amounts towards policy, salvage value of the materials and for parts, assessed the total loss to the tune of Rs.25,925/-.

12. The procedure followed in the case of claim regarding damage to the vehicle is that, as soon as the accident is intimated to the company, a spot survey is done or the vehicle is taken to the company for survey. The vehicle is removed to the repairer or the authorized dealer of the vehicle. An estimate of repairs is obtained. To avoid inflation of cost of repairs, the surveyor verifies with the mechanic, the actual repair undertaken by him and also the spare parts used in the vehicle. The value of the parts allowed, subject to depreciation, labour charges for the mechanic are taken into account for arriving at the damages, subject to deduction towards policy and salvage and other permissible deductions. Therefore in cases of accidental damage, the indemnity is the cost of repairs, i.e, labour charges plus the cost of replacement. To assess the evidence relating to repair and replacement, the evidence of the mechanic who repaired the vehicle is necessary.

13. Though the appellant/claimant deposed that he had spent considerable amount for repairing the vehicle, he has failed to examine the mechanic, who repaired the vehicle. Mere production of bills alone is not sufficient to prove that the repairs have been rectified and there was replacement of spare parts. If the mechanic is examined, the insurer will have an opportunity to cross examine him with reference to the Motor Vehicles Inspector's report and the surveyor's report. In the present case, RW.1, Surveyor has deposed that he had examined the mechanic, who repaired the vehicle and noted down the spare parts used in the vehicle, for ascertaining the damages.

14. RW.1 is a Mechanical Engineer with Diploma in Engineering, who has considerable experience in assessing the damage to the vehicle. There is no reason to reject the oral testimony of a qualified surveyor and his report, Ex.B2. The evidentiary value of the Surveyor's report cannot be

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brushed aside, in the absence of acceptable evidence on the side of the appellant/claimant. In view of the above, I do not find any illegality in the order of the Tribunal, in assessing damages to the property.

15. In the result, the award is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

skm

To

1. The Principal District Judge,
The Motor Accidents Claims Tribunal,
(Principal District Judge),
Dharmapuri District at Krishnagiri.

2. The Section Officer,
V.R.Section, High Court, Madras.

1 cc To Mr.P.Mani, Advocate, SR.5721.
1 cc To Mr.S.Manohar, Advocate, SR.5143.

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